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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. ~~1196~~ 105

CHARLES E. WILLIAMS, *Petitioner*

v.

HOWARD JOHNSON'S, INC. OF WASHINGTON, *Respondent.*

Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR RESPONDENT

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BRIEF FOR RESPONDENT

OPINIONS REPORTED BELOW

The United States District Court for the Eastern District of Virginia, in its initial decision dismissing petitioner's complaint, entered an opinion reported at 210 F. Supp. 295 (E.D. Va. 1962). The appeal from this decision, neither affirming nor reversing but remanding the case, is reported at 323 F.2d 102 (4th Cir. 1963). Following remand, the case once again came before the United States Court of Appeals for the Fourth Circuit sitting en banc and is found

at 342 F.2d 727 (4th Cir. 1965). It is from this decision that the instant petition has been filed in this Court. Opinions involving the same petitioner and raising similar questions are reported at 268 F.2d 845 (4th Cir. 1959). And see *Williams* v. *Hot Shoppes, Inc.*, 293 F.2d 835 (D.C. Cir. 1961).

COUNTERSTATEMENT OF THE CASE

Petitioner, Charles E. Williams, instituted this action to recover damages and civil penalties because he, a Negro, was allegedly discriminatorily refused service in respondent's restaurant in Alexandria, Virginia on November 5, 1959. (R. II, 1-9). He contends that the refusal to accommodate him on grounds of race was in violation of 42 U.S.C. §§ 1981, 1983, 1985(3), 1988 and §§ 1 and 2 of the Civil Rights Act of 1875 (18 Stat. 335).

The original complaint was filed in the United States District Court for the District of Columbia and, on respondent's motion, was stricken in its entirety. The petitioner, through leave granted by the United States District Court for the District of Columbia, thereupon filed his first amended complaint.[1] (R. II, 42-45).

Following removal of the cause, extensive pretrial discovery was utilized by petitioner including the taking of depositions, the propounding of interrogatories and requests for admissions were filed and answered by the

[1] The subject matter involved herein was first heard and decided unfavorably to petitioner on January 7, 1959, by the United States District Court for the Eastern District of Virginia before which an action was then pending. This decision was affirmed by the United States Court of Appeals for the Fourth Circuit. *Williams* v. *Howard Johnson's Restaurant,* 268 F.2d 845 (4th Cir. 1959). The present action between the same parties, involving the same subject matter, with slight variations, was removed from the District of Columbia, upon motion of the respondent, to the United States District Court for the Eastern District of Virginia pursuant to the provisions of 28 U.S.C. § 1404(a) (1958). (R. II, 70)

respective parties. A pretrial conference for the purpose of formulating and simplifying the issues was held at the request of the petitioner. (R. II, 143).

After still further amendment to petitioner's complaint, the case came on for hearing before the United States District Court for the Eastern District of Virginia on June 19, 1962 and the complaint was dismissed.[2] (R. II, 201). On appeal, the United States Court of Appeals for the Fourth Circuit concluded that there had been a good faith misunderstanding between the parties as to the scope of the hearing before the District Court, and the judgment below was neither affirmed nor reversed but vacated and remanded for the purpose of affording a full hearing on the merits after proper notice.[3] In this connection, the Court of Appeals established with clarity and precision the circumscription of the evidence which the petitioner would be permitted to offer, if any he had on the remand. Thus, that Court said:

> If the plaintiff has any additional evidence to offer bearing on the prosecutor's statements or activities, or if he has additional proof of a State action *pertinent to the subject matter,* he should be allowed to present it and the defendant should have an opportunity to meet it. (Emphasis added.)

Williams v. *Howard Johnson's Inc. of Washington,* 323 F.2d at 107.

These, then, were the boundaries of the evidence to be allowed at the hearing on the remand. Additionally, the Court of Appeals delineated with specificity the pivotal question upon which the decision of this case was to turn.

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[2] *Williams* v. *Howard Johnson's Inc. of Washington,* 210 F.Supp. 295 (E.D. Va. 1962).

[3] *Williams* v. *Howard Johnson's Inc. of Washington,* 323 F.2d 102 (4th Cir. 1963).

In this respect, the issue was fashioned by the Court of Appeals in the following manner:

> [T]he central question which the District Court decided, and which is the heart of this appeal, remains the same—whether the plaintiff has established that the refusal to serve him constituted 'state action,' and not merely private conduct.

323 F.2d at 105.

What was the heart of that appeal must necessarily become the heart of the hearing to be held before the District Court on the remand. This question, it is submitted, continues to be the sole issue of any consequence which has been presented by this litigation.

On April 1, 1964, this cause again came on for hearing before the District Court pursuant to the mandate of the Court of Appeals. A full and complete evidentiary hearing was accorded petitioner.[4] (R. I, 52, 53).

On August 6, 1964, the District Court filed its order, together with a memorandum opinion, dismissing petitioner's complaint and finding that the "denial of service was

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[4] At this juncture, it would seem appropriate to refer briefly to a chronology of the petitioner's pleadings. As previously noted, the original complaint was filed November 4, 1960, in the United States District Court for the District of Columbia. On respondent's motion, the complaint was stricken in its entirety. Pursuant to leave granted him, the petitioner filed his first amended complaint. After a change of venue was ordered transferring the case to the United States District Court for the Eastern District of Virginia and following the utilization of extensive pretrial discovery by both parties the petitioner amended his complaint for the second time. Then subsequent to (a) the District Court's judgment dismissing the amended complaint, (b) the appeal from such judgment to the Fourth Circuit and (c) the hearing on the remand, the petitioner undertook more than two months after the April 1, 1964, hearing to seek still another amendment to his complaint. In this latter attempt, the amendment was sought prior to the District Court's decision of the case. (R. I, 57).

a voluntary act upon the part of the manager of the restaurant." (R. I, 53).

Prior to this disposition, on June 11, 1964, petitioner sought an amendment to his complaint for the third time. (R. I, 45-51). The District Court concluded that the matters embraced within the proposed amended complaint were substantially the same grounds as those asserted in previous complaints filed by the petitioner. The respondent interposed strenuous objections to further amendment, contending that all litigation, including the action for damages, must, at some point, be terminated. The District Court concluded that, under these circumstances, the petitioner's conduct in attempting further amendment was an abuse of the Court's processes and called for the visitation of sanctions upon the petitioner who is, himself, an attorney. The District Court thereupon ordered the petitioner to pay to the Clerk of the Court the sum of $100 and directed that counsel fees of $100 be taxed against petitioner for respondent's counsel as a part of the costs assessed against the petitioner. (R. I, 54-59).

The petitioner noted an appeal from these decisions to the United States Court of Appeals for the Fourth Circuit. (R. I, 60). On February 4, 1965, the Court of Appeals affirmed the order dismissing petitioner's complaint holding, *inter alia,* that the evidence adduced on the remand failed to reveal that the Commonwealth of Virginia had, in any of its manifestations, been involved in the discriminatory exclusion of petitioner from respondent's restaurant on November 5, 1959. The Court did, however, vacate the District Court's order applying sanctions against petitioner, although the Court of Appeals noted that "plaintiff's conduct of this litigation was such as to sorely try the patience of any court . . . ." *Williams* v. *Lewis,* 342 F.2d at 730.

This petition for a writ of certiorari has followed.

QUESTIONS PRESENTED

In the context of this case, it is the opinion of the respondent that the sole question raised by the instant petition is that which was framed by the United States Court of Appeals for the Fourth Circuit in the first appeal of this case. There that Court said, and respondent respectfully adopts the statement, that:

> The fundamental question in this appeal is whether the record discloses such evidence of state participation and involvement in the discriminatory conduct as to require us to hold that the District Court was in error in determining the 'denial of service' was a voluntary act on the part of the manager of the restaurant.

Williams v. *Howard Johnson's Inc. of Washington*, 323 F.2d at 103, 104.

ARGUMENT

I

The Evidence of Record Fails to Disclose That the Exclusion of Petitioner From Respondent's Restaurant Was the Result of State Involvement

The fundamental question presented to this Court is whether the record discloses such evidence of state participation and involvement in the discriminatory conduct complained of as to require this Court to hold that the District Court, who twice heard this case, and the United States Court of Appeals for the Fourth Circuit, which twice passed upon the trial court's disposition, were in error in determining that the denial of service was a voluntary act on the part of the manager of the respondent's restaurant and therefore beyond the proscription of the Fourteenth Amendment and pertinent federal statutes.[5]

The mere establishing that the petitioner was denied service because he was a member of the Negro race does

[5] It must be noted that petitioner's asserted cause of action arose years before the 1964 enactment by Congress of laws materially affecting the civil rights of Negro citizens.

not satisfy the crucial test of state involvement. As this Court has repeatedly recognized, since its decision in the *Civil Rights Cases*, 109 U.S. 3 (1883), "that the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful." *Shelley* v. *Kraemer*, 334 U.S. 1, 13 (1947). And see *United States* v. *Harris*, 106 U.S. 629 (1883); *United States* v. *Cruikshank*, 92 U.S. 542 (1876).

In accordance with these precedents, it cannot be controverted that private conduct abridging individual rights does not violate the equal protection clause "unless to some significant extent the State in any of its manifestations has been found to have become involved in it." *Burton* v. *Wilmington Parking Authority*, 365 U.S. 715, 722 (1961); *Peterson* v. *Greenville*, 373 U.S. 244 (1963).

It was within this constitutional rubric that the petitioner had to prove that the Commonwealth of Virginia was necessarily involved in this discriminatory conduct rather than a finding that the question of racial exclusion had been left to the sphere of private choice. It is essential, therefore, that this Court must find that the record reveals that the alleged discriminatory practice was "under color of law" and therefore within the reach of the Federal Constitution. Recognition must be accorded, however, to the decisions of the Court of Appeals for the Fourth Circuit and the Court of Appeals for the District of Columbia Circuit which have found that petitioner's complaints are without constitutional merit. Moreover, these appellate decisions were reached by each circuit while sitting en banc.

The record will amply disclose that the sole evidence in both hearings before the trial court of unconstitutional discrimination grew out of the petitioner's own testimony. According to his version, the respondent's restaurant

manager answered "Yes" to his question as to whether the refusal to serve him was "on account of state law, custom or usage." (R. V, 5). But even that testimony is suspect at best, for when considered in the light of the deposition of the restaurant manager (who died prior to April 1, 1964) there is considerable doubt that the manager gave the answer so attributed to him by the petitioner.

Both on deposition and in the second hearing on the merits, the petitioner on cross-examination testified that the words "law," "custom," and "usage" were his technical words carefully chosen and incorporated in the question that he asked the restaurant manager. (R. V, 18). They were not the manager's words (R. V, 18) and the question was propounded by petitioner, who had long been a lawyer, who was a former professor of law, and who had made himself closely knowledgeable with the Civil Rights Acts and their language (R. V, 16-18). On the other hand, the restaurant manager was unversed in the ways of the law and the answers which he gave on deposition revealed the transparency of the petitioner's testimony in this regard.

On deposition the manager succinctly stated that he did not believe he would have been discharged from his position if he had served the petitioner (Pl. Ex. 50); that it was his judgment as manager that it was better not to serve Negroes whose presence in the restaurant would cause a disorder; that it was his judgment that it was better not to serve the petitioner in the restaurant nor any customer, the service of whom might jeopardize the restaurant's business or cause him to "lose an employee or two," in which event he usually requested the customer to leave (Pl. Ex. 50-51); that he was unaware of any "custom or a racial segregation law" in Virginia or of any requirement for the segregation of white and colored people in public places in Virginia (Pl. Ex. 61); that he had never heard from any source that the "State's Attorney was going to enforce racial segregation in the restaurants of Alexandria" (Pl.

Ex. 62, 63); and that his employer had neither discussed with him nor given him any orders whatsoever with respect to serving Negroes in that particular restaurant (Pl. Ex. 64). Therefore, contrary to the assertions of petitioner the manager thought that the exclusion of Negroes from that business establishment was necessary for the successful operation of his enterprise. It was, therefore, a voluntary act of a private citizen entirely divorced from the powers of the State.

The answers that this same witness gave to petitioner's interrogatories are to the same effect and render petitioner's assertions nothing but bald, unsubstantiated allegations. For example, the manager stated that he did not feel compelled to exclude Negro customers from the restaurant (R. II, 81-89); stated that he had received no instructions from his employer regarding the serving of Negroes (R. II, 81-89); categorically denied that he had advised the petitioner that he was not personally objectionable to him as a prospective patron (R. II, 82, 100); denied that he had advised the plaintiff that exclusion of Negroes from the restaurant was embarrassing (R. II, 82, 100); denied that he had advised the petitioner "in effect" that his reason for refusing to accommodate the petitioner was that Virginia law compelled exclusion of Negroes from restaurants (R. II, 82, 100); and denied having ever stated to petitioner that if he accommodated petitioner he would become subject to prosecution for violation of Virginia law (R. II, 82, 100).

It is significant to note that the petitioner in his earlier suit against the same respondent conceded, before the Fourth Circuit, that neither the Virginia segregated seating law nor any other similar statutory provision required the exclusion of Negroes from public restaurants. See *Williams* v. *Howard Johnson's Restaurant*, 268 F.2d 845, 847 (4th Cir. 1959). This concession was likewise duly noted by the District of Columbia Circuit in petitioner's

suit against a competitor of respondent. See *Williams* v. *Hot Shoppes, Inc.*, 293 F.2d 835, 839 (D.C. Cir. 1961).[6]

Furthermore, the Virginia Supreme Court of Appeals has declared it to be the law that a restauranteur, unlike the proprietor of an inn or hotel, may select his patrons as he desires, accepting some and rejecting others, even to the point of basing his personal choice on purely racial grounds, but that the law does not compel him to segregate customers according to race. See *Alpaugh* v. *Wolverton*, 184 Va. 943, 36 S.E.2d 906 (1946); *Randolph* v. *Commonwealth*, 202 Va. 661, 119 S.E.2d 817 (1961).[7]

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[6] Petitioner argues that State involvement must necessarily be found because the Commonwealth of Virginia regulates the conduct of restaurants within its jurisdiction. Further, that the corporate charter does not authorize discriminatory practices and therefore the voluntary act of respondent's manager was beyond its corporate powers. This argument, it is submitted, has never been adopted by this Court nor apparently by any other Court. A corporate entity can only operate through its agents. If these agents believe that it is necessary for the successful operation of their business to exclude Negroes, then at the very least it was an implied power under its corporate charter. Furthermore, the respondent was not incorporated under the laws of the Commonwealth of Virginia (R. II, 106) and a license to do business in that state certainly does not establish a meaningful nexus between the practice of discriminatory exclusion and significant state involvement.

[7] In his proposed third amended complaint, leave for filing of which was denied by the District Court and affirmed by the Fourth Circuit, petitioner complains of a deprivation of his common law rights. He says that a licensee or an invitee does not become a trespasser until ordered to leave and that the request to leave is essential to change his status (see petitioner's brief, pp. 3, 13, 19). But petitioner conveniently overlooks the fact that he acquiesced in the restaurant manager's refusal to serve him and voluntarily left the premises. The refusal to serve was the equivalent of a request to leave the restaurant and the voluntary departure of the petitioner therefrom would have made any request to leave a meaningless and useless act on the part of the restaurant manager. In

Additionally, the Attorney General of the Commonwealth of Virginia issued an opinion in 1960 in which he recognized that the so-called Virginia segregated seating law[8] did not apply to restaurants, lunch counters and cafeterias and therefore these establishments were, in his opinion, excluded from the ambit of that statute. Separation of the races was therefore left to the individual discretion of the proprietors of public restaurants. See *Williams* v. *Hot Shoppes, Inc.*, 293 F.2d 835, 848-51 (D.C. Cir. 1961) (App.).

Petitioner would also contend that state involvement may be predicated upon the alleged activities and pronouncements of the Commonwealth Attorney for the City of Alexandria, in that he supposedly regarded restaurants as within the Virginia segregation statutes and so advised those who made inquiries during 1959.

Contrary to this bare assertion, Mr. Earl Wagner, the Commonwealth Attorney for the City of Alexandria, was called as a witness by petitioner and testified at the hearing held on April 1, 1964. (R. V, 34). Demonstrative of the absence of state action, Mr. Wagner testified that it was his duty to enforce the criminal laws of the Commonwealth of Virginia (R. V, 36); that he had not attended any regular meetings to discuss any problems with relation to uniform law enforcement; that at any meetings of the Commonwealth attorneys that were held and which he attended, the question of "the enforcement" of racial segregation in restaurants was not discussed (R. V, 39); that he had never

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any event, under Virginia law, as hereinabove indicated, a restaurateur is not charged with the common law duty to serve everyone who applies. There being no cognizable legal duty to serve the petitioner there cannot be any deprivation of a common law right giving rise to damages. This being so, the petitioner's asserted claims founded upon a common law remedy must necessarily fall.

[8] Va. Code Annot. §§ 18.1-356 & 18.1-357 (Supp. 1960).

had any occasion or opportunity to have anything to do with the statute under discussion; that he had no occasion to prosecute anyone in connection with the so-called segregated seating law and that he had received no complaints of a violation thereof as it pertained to restaurants. (R. V, 42-52). Furthermore, this witness had no recollection of making any statements in which he was supposed to have stated that the segregated seating law applied to restaurants. (R. V, 41).

Thus, the evidence adduced at the trial completely lacked the probity necessary to find state involvement. There is no disclosure of the Commonwealth Attorney's intentions underlying any declaration of his views nor was there any exploration of the influence this declaration may have had in the instant case. Hardly does the instant case take on the image or assume the proportions of the "highly publicized announcements" made by public officials and which were found by this Court to constitute state action in *Lombard* v. *Louisiana*, 373 U.S. 267 (1963).[9]

Petitioner's case also failed to receive any support from his witness, Charles Mayne, a vice-president of respondent's corporation.

This witness testified that although respondent was a member of the National Restaurant Association, he never exercised or participated in any activity of that Association

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[9] The petitioner asserts that the failure of the Commonwealth Attorney to investigate his complaints of being racially excluded from restaurants constituted an official sanction of, or acquiescence in such discrimination. It would suffice to say that no statute, as petitioner has conceded, compels racial segregation in restaurants in the Commonwealth of Virginia and therefore the question of criminal prosecution does not arise. In this posture, the Commonwealth Attorney did not have an official duty to investigate since the segregated seating law of Virginia did not apply to restaurants and the determination by the proprietor to serve or not to serve Negroes was left to his discretion without any attendant criminal responsibility.

(R. V, 77); nor did either the Association or its pronouncements have any influence on the thinking of this witness or the policy of its restaurants. This witness did reveal in answer to written interrogatories, however, that neither he nor, as far as he could ascertain, had any officers, directors, or agents of the respondent entertained any fear that if they undertook to accommodate Negroes, including the petitioner, in the Alexandria restaurant during 1959 they would be subject to prosecution for violation of a Virginia racial seating law. (R. II, 98).

Respondent also believes that the testimony of Walter F. Whit, Executive Secretary of the Virginia Restaurant Association, should be considered as probative evidence of a failure of petitioner to prove that the exclusion of Negroes from restaurants was accomplished by state action. More specifically, this witness testified that the Association had never invited nor had any Commonwealth Attorney appeared at any meetings of the Association (R. V, 93); that the Association had never considered in any official or unofficial meeting the matter of restaurant desegregation during 1958, 1959 or 1960 (R. V, 99-100); and that the Association had no policy as to restaurant segregation, leaving such matters to the private determination of its individual members. (R. V, 100).

As this evidence of record readily reveals, the refusal to serve the petitioner resulted from the voluntary act of respondent's manager and was not commanded or induced by state action.

II

Sections 1 and 2 of the Civil Rights Act of 1875 Are Constitutionally Invalid

As determined by the Courts below and adhering to the precedents established by this Court, sections 1 and 2 of the Civil Rights Act of 1875, upon which the petitioner's position was based in part, were held to be unconstitutional. These statutory provisions were found unconstitutional as

applied to interstate racial discrimination in the *Civil Rights Cases.* 109 U.S. 3 (1883). Later, in *Butts* v. *Merchants' & Miners' Transp. Co.*, 230 U.S. 126 (1913), this Court held that these provisions could not be applied to penalize racial discrimination aboard interstate carriers even though the statute could, in that particular application, be upheld under the commerce power.

In *United States* v. *Raines*, 362 U.S. 17 (1960), this Court expressly reaffirmed the *Butts* decision. Therefore, even if respondent's conduct is assumed *arguendo* to embrace prohibitive state action, sections 1 and 2 of the Civil Rights Act have no present validity, and petitioner's claim under them was properly dismissed.[10]

III

The Belated Contention That the Transfer of This Cause From the District of Columbia to the Eastern District of Virginia Pursuant to the Provisions of 28 U.S.C. § 1404(a) Was Achieved By Misrepresentation and Fraud Is Baseless and Totally Lacking in Evidentiary Support

Petitioner, for the first time in this protracted litigation, has introduced the allegation that the removal of this case was brought about by misrepresentation and fraud. In making this bald assertion, petitioner fails to point to a scintilla of evidence within the confines of this record to support his proposition. Obviously, the apparent reason for this omission is that no support can be found in the record.

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[10] Even if the Civil Rights Act were valid and applicable to this situation, it would not support the petitioner's case since it covers only *inns*, public conveyances and places of amusement. (Emphasis added.) It has been held in Virginia, *Alpaugh* v. *Wolverton*, 184 Va. 943, 36 S.E.2d 906 (1946), that a restaurateur is not an inn-keeper charged with a common law duty to serve everyone who applies. In the absence of a statute, he may, therefore, discriminate on purely personal grounds in the selection of his clientele.

The petitioner, in this case as well as related cases involving the same parties, has availed himself of every procedure, mechanism, and process which the law provides in the vindication of rights and the redress of wrongs. He did not raise this question at any of the hearings below or on the appeals which followed.[11]

The record reveals with clarity the basis upon which a change of venue was sought and ordered. (R. II, 16-21, 70). The reasons advanced were, *inter alia,* that the Eastern District of Virginia was particularly suited for a determination of this case in that it had recently disposed of a similar suit involving the same parties and practically the same subject matter, which decision was affirmed by the Fourth Circuit. *Williams* v. *Howard Johnson's Restaurant,* 268 F.2d 846 (4th Cir. 1959). Moreover, the petitioner's complaint was predicated upon allegations that the discrimination alleged was founded on Virginia law, custom, and usage. Therefore, it was appropriate for a tribunal familiar with local law to sit on this case. Additionally,

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[11] Likewise, petitioner presents for the first time in this case the proposition that in the conduct of the trial below the District Court committed reversible error in failing to adhere to the Best Evidence Rule. It is sufficient that this issue was neither raised at trial nor presented to the Court of Appeals. Furthermore, questions of this calibre fail to achieve the stature required for the invocation of Supreme Court review. The failure to raise this issue in the myriad of proceedings below precludes effective appellate review.

In similar light, the issue framed by petitioner's brief respecting the quantum of proof necessary to establish a prima facie case would also seem to be beyond the pale of Supreme Court review. The burden of proof by a preponderance of the evidence was necessarily on the petitioner. The District Court twice dismissed his complaint and such a conclusion fashioned on a substantial evidentiary basis should not be set aside unless clearly erroneous. The limitations on appellate review are set forth in Fed. R. Civ. P. 52 (a). See *United States* v. *National Ass'n of Real Estate Bds.,* 339 U.S. 485, 495-96 (1950).

the act complained of arose out of that jurisdiction and the only nexus between the District of Columbia and this cause was the petitioner's residency in the District of Columbia.

IV

The Petitioner Was Afforded Procedural Due Process

The petitioner further complains that a supposed constitutional question has been raised in that he was allegedly denied the benefit of the Federal Rules of Civil Procedure. Among other claims, he asserts that Rule 15, respecting amendments to pleadings, was abridged.

It is remarkable to conceive that this claim can be made in the face of a record which reveals that the petitioner twice amended his complaint and on a third occasion attempted to amend his complaint after the District Court had held a hearing on the merits but prior to its decision. The District Court denied petitioner leave to file his proposed third amended complaint and this decision was affirmed by the Fourth Circuit while sitting en banc.

As Professor Moore in his authoritative treatise on the Federal Rules of Civil Procedure has stated:

> The purpose of an amendment to conform to proof is to bring the pleadings in line with the actual issues upon which the case was tried; therefore an amendment after judgment is not permissible which brings in some entirely extrinsic issue or changes the theory on which the case was actually tried, even though there is evidence in the record—introduced as relevant to some other issue—which would support the amendment. This principal is sound, since it cannot be fairly said that there is an implied consent to try an issue where the parties do not squarely recognize it as an issue in the trial.

3 Moore, *Federal Practice* ¶15.13 (2) (2d ed. 1964).

In this law suit, petitioner has availed himself of every conceivable process to vindicate his claim. This case was

twice before the District Court and twice reviewed by the Court of Appeals for the Fourth Circuit. It is beyond peradventure that substantial, if not complete, procedural due process has been obtained by the petitioner and the decisions reached by the Courts below were eminently correct and should not be disturbed.

CONCLUSION

Wherefore, for the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit be denied.

Respectfully submitted,

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